IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No.1667 of 2006
with
Chamber Summons No. 129 of 2007

Nareshchandra K Zaveri & ors. ..Petitioners.

Vs

Allahabad Bank and Ors ..Respondents

Mr.S.U. Kamdar, with Mr. Niranjan Mogre i/b Haresh Mehta and Co for petitioners
Mr.D.H.Mehta with Mr. Jayesh Patel respondent no.1
Mr.K.R. Belosey Govt. Pleader for respondent No.5

CORAM: SWATANTER KUMAR,C.J.,&
SMT. RANJANA DESAI, J.
DATE: JULY 3, 2007.

P.C.:-

We have heard the learned counsel appearing for the parties at some length. At the very outset an objection has been raised on behalf of the respondents to the maintainability of the present petition on account of availability of equally efficacious remedy under statutory provisions of DRT Act.

The learned counsel for the petitioners contended that there has been fraud played on the petitioners who are the legal heirs of the deceased Kantilal Zaveri, who unfortunately expired in the year 1964. It is also contended that the original documents of the property are still with the legal heirs of the

said deceased person, who was admittedly the owner of the property.

Various controversies have been raised, which require factual determination upon the parties leading proper evidence.

Upon hearing the parties, the learned counsel for the petitioners wishes to withdraw this petition with liberty to file an appeal under section 17 of the Act before the competent forum, where he also seeks liberty to pray for interim relief, which in his submission may be decided expeditiously. The learned counsel for the respondents have no objection to the petitioners preferring such an appeal. Consequently, while disposing of this petition as withdrawn we grant liberty to the petitioners to prefer an appeal, alongwith interim relief application before the competent forum. If such an appeal is filed we hope that the same would not be dismissed on the ground of limitation as the petitioners were pursuing the present petition since the year 2006, under bonafide impression that the petition is maintainable and, therefore, in view of the provisions of section 14 of the Limitation Act, the application of the petitioners will be expected to be considered by the authorities. We also direct that for a period of six weeks from today, interim order granted under the orders of this court dated 20th February 2007 shall

continue, subject to the orders which shall be passed during that period by the appropriate forum.

Writ petition is disposed accordingly with no order as to costs. In view of the disposal of the main petition, no order on the Chamber Summons.

CHIEF JUSTICE

SMT. RANJANA DESAI. J.